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To: All Local Attorneys Representing Subdividers and Developers

RE: Attorney certificates on final plats in Delta, Colorado

Dear Ladies and Gentlemen:

Under the City of Delta's land use and development regulations, the final plat of any subdivision, PUD, boundary adjustment and the like must include the certificate of an attorney that the pertinent property is in fact owned by the signing developer(s) and that title is not subject to any "liens or encumbrances" held by anyone other than those who are specifically identified by name and by related recording information. This title information enables us at City Hall to confirm that all existing holders of liens and encumbrances join with the pertinent property owners themselves in making legally required dedications of public roads and utility easements shown on the plats. In the past, attorneys have often misunderstood the City's requirements, particularly those relating to the identification of lien and encumbrance holders, and have instead vaguely referred us in their certifications to all matters of record or to "title insurance policies covering the property", or have otherwise listed the required matters too vaguely, thus inviting rejection of their clients' plats on the basis of incomplete or inaccurate information. Sometimes, the certifications include reference to easements and other matters of no concern to the City. To be complete and accurate, you merely need to include in your plat certificates the identities of holders of documents that could be the subject of a foreclosure or judicial sale such as mortgages, deeds of trust, judgments, and tax certificates, and the recording information relating to such documents. A sample of an acceptable attorney certificate would be as follows:

I, John Smith, an attorney at law duly licensed to practice before the Courts of record of Colorado, do hereby certify that I have examined the title of all land herein platted and that said title is vested in the dedicators and owners, free and clear of all liens and encumbrances, except as follows: a deed of trust recorded in favor of Norwest Bank of Delta, Colorado under Reception no. 111111; and a transcript of judgment recorded in favor of Ray Brown under reception no. 222222.

For your protection, you may, but need not, add that your certification is based upon review of a specifically identified title insurance commitment or abstract of title, but do not merely refer us to such items. We will not do research to clarify unspecific or incomplete lien and encumbrance information.

If you have questions, please call me; or consider faxing me the wording that you propose to use before you place it on the plat itself. Developers become understandably frustrated when their attorneys' erroneous guesswork is rejected by the City and their plats are required to be redone. By the way, each certification must be legibly written on the pertinent plat in indelible ink. Fine point "Sharpie" permanent marker pens work the best for that purpose.

Thank you very much for your cooperation.

Very truly yours,

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/s/ Michael Schottelkotte  
Michael Schottelkotte, City Attorney